

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN T. WILLIAMS)	
Claimant)	
VS.)	
)	
T. PALMER DRIVER SERVICES, INC.)	Docket No. 147,223
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an October 11, 1996 Award by Administrative Law Judge Alvin E. Witwer.

APPEARANCES

Claimant appeared by James E. Martin of Overland Park, Kansas. Respondent and its insurance carrier appeared by Lynn E. Fox of Kansas City, Missouri. The Kansas Workers Compensation Fund (Fund) appeared by Scott J. Bloch of Lawrence, Kansas.

RECORD

The Appeals Board considered the record listed in the Award.

STIPULATIONS

Claimant alleged he sustained personal injuries by accidents in March 1990 in Wyoming, May 8, 1990 at Columbus, Ohio, and May 21, 1990 at Portland, Oregon. The Director designated Saline County, Kansas as the county of venue. The relationship of employer and worker existed on the dates of the alleged accidental injuries. The parties are governed by the Kansas Workers Compensation Act. Claim for compensation was timely made. Fireman's Fund was the respondent's insurance carrier on the dates of the alleged accidental injuries. The respondent-insurance carrier has not paid any temporary total disability compensation or temporary partial disability compensation to the claimant. The respondent-insurance carrier had not paid for any medical or hospital treatment received by the claimant. Claimant is not claiming any vocational rehabilitation benefits at the expense of either the respondent-insurance carrier or Kansas Workers Compensation Fund. In the event an award is entered in favor of the claimant in this matter, 25 percent of such award would be the responsibility of the respondent-insurance carrier, and 75 percent would be the responsibility of the Kansas Workers Compensation Fund. The parties agreed that claimant's average weekly wage was \$633.00 on the date of accident.

ISSUES

- (1) Whether claimant met with personal injury by accident in Wyoming in March 1990; May 8, 1990, in Ohio; or May 21, 1990 in Oregon.
- (2) Whether claimant's alleged personal injuries by accidents arose out of and in the course of his employment with respondent.
- (3) Whether respondent had notice of claimant's alleged accidental injuries and, if not, whether respondent was prejudiced by such lack of notice.
- (4) Whether claimant is entitled to any future medical treatment at the expense of the respondent/insurance carrier and the Fund.
- (5) Whether claimant is entitled to any temporary total compensation at the expense of the respondent/insurance carrier and the Fund.
- (6) Whether claimant is entitled to have paid by the respondent/insurance carrier and Fund as reasonable and necessary medical expenses the following:

Orthopedic Clinic	\$145.50
United Radiology Group	\$ 66.00
Drs. Weber, Palmer & Macy	40.50

William A. Carr, M.D.

42.00

Total \$294.00

- (7) The nature and extent of the disability, if any, that claimant sustained as the result of his alleged personal injuries by accident.
- (8) What, if any, is the compensation due claimant as a result of his alleged accidental injuries of March 1990, May 9, 1990, and May 21, 1990.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was hired as an over-the-road truck driver for respondent on January 21, 1990. Following a period of training, claimant started driving his own truck on February 27, 1990. In late February or early March the claimant alleges he slipped on ice on a truck liner and twisted his left knee while in Wyoming. On or about May 8, 1990 claimant allegedly jumped off a dock in Ohio and his left knee popped. In late May 1990 claimant drove from Colorado to Oregon and when he woke up the morning of May 21, 1990, claimant alleges he could not move his left leg. Claimant sought medical treatment in Oregon and eventually drove his truck back to Salina, Kansas, and obtained medical treatment there.

Prior to his employment with respondent, claimant had sustained an injury to his left knee while jumping off a ladder at home on or about November 12, 1989. The record reflects claimant first sought medical treatment for that left knee injury on November 25, 1989. He was on crutches for approximately three weeks thereafter. Claimant reported that prior knee injury on his job application to respondent and thereafter passed a pre-employment Department of Transportation physical examination.

Claimant did not report a work-related injury to his employer following any of the above-described events. At such times as he did seek medical treatment, claimant related his left knee problems to the November 1989 incident which occurred at his home. The medical bills for treatment of his left knee following the alleged incidents in 1990 were submitted to the claimant's health insurance carrier and not to workers compensation. It was not until after his health insurance carrier denied coverage that claimant alleged his condition was work related.

The Administrative Law Judge denied this claim based primarily upon his determination that claimant was not credible. The Administrative Law Judge had previously denied claimant's request for medical treatment and temporary total disability compensation following the November 5, 1990 preliminary hearing. At that time the Administrative Law Judge had the opportunity to personally observe claimant's testimony

and was not persuaded by same. The Appeals Board gives some deference to the assessment and conclusion reached by the Administrative Law Judge in this regard.

Although claimant's treating orthopedic surgeon, Dr. Mile G. Sloo, III, eventually related claimant's condition to his work with respondent, he did so based upon a history that was given to him months after the claimant's initial treatment. It appears this letter was calculated more toward litigation than for purposes of medical treatment.

The medical evidence supports claimant's testimony to the effect that his left knee symptoms were worse in late May 1990 than they had been when he started work for respondent. It is less clear whether or not the underlying condition was permanently aggravated as opposed to claimant's having suffered a temporary aggravation of symptoms. The November 1989 nonwork-related injury may have been more significant than originally suspected or claimant may have aggravated his condition in some other way. Although the record does not contain evidence of a nonwork-related accident or injury having been suffered by claimant during the period in question, the conflicting testimony and history given by claimant give rise to such a concern. Furthermore, the belated opinions of Dr. William A. Carr and Dr. Sloo, which related claimant's work activities to his condition, were both based upon histories which were different than those initially given by claimant.

It would be more plausible that claimant would not have reported his left knee aggravation to his employer if it had been solely the result of a gradual worsening due to the performance of his regular job duties. However, claimant relates two specific accidents, one in Wyoming and another in Ohio, to which he attributes some of his condition. It is difficult to understand why neither of these incidents were reported to his employer even when the subject of his left knee was being discussed. Claimant repeated the same scenario with all of the physicians, that is, he initially related his condition to the November 1989 incident with no mention of any subsequent work-related accident. As with the Administrative Law Judge, these inconsistencies raise a concern with the Appeals Board as to the claimant's credibility. Accordingly, the Appeals Board is in agreement with the Administrative Law Judge's finding that claimant has failed to meet his burden of proving that his left knee condition was caused by or permanently aggravated by his work with respondent. The Appeals Board adopts the findings and conclusions by the Administrative Law Judge as set forth in his Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 11, 1996 Award entered by Administrative Law Judge Alvin E. Witwer should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James R. Martin, Overland Park, Kansas
Lynn E. Fox, Kansas City, Missouri
Scott J. Bloch, Lawrence, Kansas
Office of Administrative Law Judge, Overland Park, KS
Philip S. Harness, Director